

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

STATE OF TENNESSEE, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the United States Department of Health and Human Services, *et al.*,

Defendants.

No. 1:24-cv-00161-LG-BWR

DEFENDANTS' NOTICE REGARDING STATUS OF FIFTH CIRCUIT APPEAL

In accordance with this Court's Order Denying Plaintiffs' Motion for Entry of Briefing Schedule and Granting Defendants' Motion to Stay ("Stay Order") at 2, ECF No. 57, Defendants hereby notify the Court that the parties stipulated to the dismissal of Defendants' appeal to the Fifth Circuit of this Court's July 3, 2024 Memorandum Opinion and Order granting a nationwide preliminary injunction and stay under 5 U.S.C. § 705 ("PI Order"), ECF No. 29. The Fifth Circuit dismissed the appeal on March 13, 2025. Defendants have also dismissed their appeals of preliminary injunction rulings in two other cases challenging the Section 1557 rule.

Defendants continue to assess next steps in light of the change in Administration, and, as of this filing, are in the process of considering new rulemaking related to the definition of sex. In light of that position, the operative stay remains appropriate. *See Akiachak Native Cnty v. U.S. Dep't of Interior*, 827 F.3d 100, 114 (D.C. Cir. 2016) (An agency's "ability to moot challenges to regulations" by revising or rescinding them is "fundamental to judicial economy"); *Anchor Line Ltd. v. Fed. Maritime Comm'n*, 299 F.2d 124, 125 (D.C. Cir. 1962) ("[W]hen an agency seeks to reconsider its action, it should move the court to remand or to hold the case in abeyance pending reconsideration by the agency."). Defendants respectfully submit that a continuation of the stay

will not harm Plaintiffs, as the various preliminary injunctions—including the one issued by this Court—will remain in place as a result of the stipulated dismissals of appeals. Defendants further submit that they are prepared to provide status reports with any new developments every 90 days, should the Court require it.

Dated: March 17, 2025

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director

/s/ Sarah M. Suwanda
SARAH M. SUWANDA
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
Tel.: (202) 305-3196
E-mail: sarah.m.suwanda@usdoj.gov

Counsel for Defendants